

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14509 of Jeffrey Fox and Julie Miller, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a nonconforming structure now exceeding the lot occupancy requirements (Paragraph 7105.12), the lot occupancy requirements (Sub-section 3303.1), the rear yard requirements (Sub-section 3302.1) to construct a deck to a nonconforming structure in a R-5-B District at premises 1760 U Street, N.W. (Square 151, Lot 213).

HEARING DATE: November 19, 1986

DECISION DATE: December 3, 1986 and January 7, 1987

FINDINGS OF FACT:

1. The subject property is located on the south side of U Street between 17th and 18th Streets, and is known as premises 1760 U Street, N.W. It is zoned R-5-B.

2. The site is rectangular in shape containing approximately 1,714 square feet of lot area with 17.14 feet of frontage along U Street and a depth of 100 feet.

3. The site is currently improved with a three-story plus basement, brick row dwelling which was constructed in approximately C. 1905 and is presently occupied as a single family residence. The site abuts a 10.25 foot public alley to the rear.

4. The subject structure is one of several similar connected row dwellings. The general neighborhood is characterized by single and multi-family structures in an extensive area of R-5-B zoning.

5. The applicants are seeking variance relief to permit the continued use of an existing rear deck. The deck was constructed in 1983 without benefit of proper building permits.

6. The deck is irregularly shaped and extends into the rear yard approximately 15.8 feet. The deck is accessible to the first floor level of the subject residence.

7. The applicants were not aware that building permits were required to permit the construction of the deck at the time that the deck was built. The applicants were informed of the need for a building permit in approximately May of

1986. The applicants then proceeded to apply for the appropriate permits with the District of Columbia Department of Consumer and Regulatory Affairs.

8. The applicants testified that the deck does not obstruct light and air to adjacent properties. There have been no complaints from the adjacent neighbors.

9. The applicants testified that the deck provides for play area for their children which is easily accessible from the kitchen located on the first floor. The subject premises are located on a heavily trafficked thoroughfare and alley and no nearby outdoor play area is available which does not necessitate crossing busy streets. The elevated deck also provides security for the children with regard to rats which infest the alley and heavy vehicular traffic through the public alley to the rear of the site.

10. The maximum allowable lot occupancy of the site is sixty percent or 1,028.4 square foot. The subject structure exceeded the lot occupancy requirements by approximately 167.97 square feet prior to the construction of the deck. The deck measures approximately 169.20 square feet. The total lot occupancy is 1,365.57 square feet. A variance of 337.17 square feet or 32.78 percent is required.

11. The minimum required rear yard is fifteen feet. The rear yard provided is 14.2 feet. A variance of 0.8 feet or 5.33 percent is required.

12. The maximum permitted FAR is 1.8 or 3,085.2 square feet. The subject structure exceeded the FAR requirements by approximately 375.36 square feet prior to construction of the deck. The total FAR is 3,629.76 square feet. A variance of 544.56 square feet or 17.65 percent is required.

13. The first floor level of the premises is at ground level on the U Street frontage and is approximately seven feet above ground level at the rear. The deck is elevated above the ground approximately 6.75 feet. If the deck were lowered to an above-ground elevation of four feet or less, no variance relief would be required.

14. The applicants testified that lowering the deck to eliminate the need for variance relief would create an undue hardship in that an existing on-site parking space would be eliminated and the rear entrance to the basement level of the house would be obstructed.

15. The record contains several letters from neighboring property owners in support of the application.

16. A representative of the Residential Action Coalition testified at the public hearing in opposition to the

application. The opposition was based on the fact that the construction of the deck began without first obtaining proper permits and that the applicant did not meet the requisite burden of proof.

17. The Board left the record open at the end of the public hearing to receive the report of Advisory Neighborhood Commission 1C. By letter received on November 20, 1986, ANC 1C indicated its unanimous support of the granting of the application. The ANC also submitted six statements in support of the application from nearby property owners. The ANC report failed to address specific issues or concerns and, therefore, can not be afforded "great weight" as set forth in the Supplemental Rules of Practice and Procedure before the BZA.

CONCLUSIONS OF LAW AND OPINION:

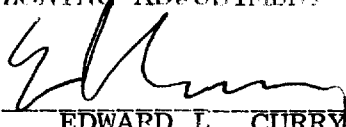
Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owners arising out of an exceptional or extraordinary condition inherent in the property itself. The Board concludes that the burden of proof has not been met.

The Board further concludes that the requested relief can not be granted as in harmony with the intent and purpose of the Zoning Regulations and Map. Accordingly it is ORDERED that the application be DENIED.

VOTE: 4-1 (Charles R. Norris, William F. McIntosh, and Paula L. Jewell to deny; John Parsons to deny by proxy; Carrie L. Thornhill opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: DEC 4 1987

UNDER 11 DCMP 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."